

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA *United States Court of Appeals*

OCTOBER TERM, 1951. *For the District of Columbia Circuit*

FILED APR 11 1952

No. 11,133

Joseph W. Stewart
580
CLERK

EDWIN J. CREEL, *Appellant,*

v.

ROBERT T. CREEL, ERSKINE GORDON, *Receiver,*
G. BOWDOIN CRAIGHILL, *Receiver's Attorney.*

PETITION FOR REHEARING.

Comes now the appellant, Edwin J. Creel, and prays:

I. That the Court reconsider its order or decree of March 28th, 1952—on the grounds set out later on herein, and that the dismissal of this appeal, as decreed therein, be set aside.

II. Appellant prays that the Court reconsider and set aside its order entered herein on Jan. 21st, 1952; and of which this present order of dismissal of March 28th, is merely a continuation and formalization.

In that said order of Jan. 21st, the Court denied appellant's motion (1) for a further extension of time to file

brief; and (2) for issuance of a writ restraining the appellees and their respective Counsel, and all those in collusion with them; from further carrying on the campaign of criminal attacks, and of attempted assassination of this appellant, that has been carried on against appellant, for two years past. Appellant asked also that the appellees, and their respective Counsel, be placed under \$30,000 bonds each to insure their compliance with that injunction.

Appellant asks reconsideration, and the setting aside of that said order of Jan. 21st, in connection with the requested reconsideration of the present order of dismissal, and of which the said order of Jan. 21st formed the basis. Reconsideration of the order of Jan. 21st, is asked on the ground of an illegal constitution of the Court, because Judge Proctor sat in that action of the 21st.

Sec. 25 of the Act authorizing this Court, provides that no judge of the District Court shall sit "in review" of any order which he himself entered in the District Court. One of the principal issues on this appeal is the charge of conspiracy to criminally misuse this receivership; by having all of appellant's property seized through the receivership; and of then denying to appellant any allowance from his share of the partnership property; and thus of preventing appellant from carrying on his defense in this suit.

Judge Proctor sat in this case in 1934, and he then denied to appellant any allowance from appellant's share of the partnership funds, for the carrying on of appellant's defense. That denial, as was urged by the plaintiff appellee, constitutes part of the basis for the charge of criminal conspiracy, that is raised as the principal issue on this appeal. Appellant charges that any conclusion concerning the alleged fraudulent character of that denial of an allowance to appellant in 1934, would constitute a "review" of that denial, within the meaning of the statute. Appellant urges therefore that Judge Proctor was statutorily disqualified from sitting in this appeal in this Court; and that the order of Jan. 21st is therefore illegal and void.

And since that order of Jan. 21st, constitutes the basis, and is actually a part of the present order for dismissal, of March 28th; appellant urges that that said order of Jan. 21st, should be reconsidered and set aside along with the order of dismissal of March 28th, under this present motion for rehearing.

III. As an amendment to appellant's motion of Dec. 15th—the denial of which appellant urges should be reconsidered and set aside—appellant prays that appellant be granted a further nominal extension of three months for the filing of appellant's brief; and this because of the necessity for appellant to better assure himself of his personal safety, against the campaign of criminal attacks, and of attempted assassination, that has been, and is being carried on against appellant, by the appellees, or their Counsel, or those directly or indirectly in collusion with them.

IV. As a renewal of appellant's motion of Dec. 15th, appellant asks that a writ be issued, restraining the appellees Robert T. Creel, and Erskine Gordon, and their respective attorneys Walter N. Tobriner, Leon Tobriner, and G. Bowdoin Craighill—and all those in collusion with them—from any further carrying on of the campaign of criminal attacks, or of harassments, against this appellant; and that each of the appellees and their attorneys be placed under \$30,000 bond, each, to insure their compliance with the said injunction.

Preliminary Statement.

As a preliminary statement in support of the more specific grounds for reconsideration, and for the setting aside of the dismissal decree of March 28th, appellant says:

1. That since March, 1933, or for more than nineteen years past, appellant has been made a victim in the District Court, of what must now become known as the most shameful, and most brazenly criminal miscarriage of justice that has ever stained the record of any civil court.

2. For it is universally established that a partner stands in a fiduciary, or trust relationship, to the partnership property and toward his co-partners. As such a fiduciary or trustee for his co-partners; a partner is forbidden to deal in any way with the partnership property, for his own benefit, without the full and free consent of his co-partners, and whether by purchase or otherwise.

If a partner does so deal with the partnership property, for his own benefit, without the consent of his co-partners, it is universally established that any such transaction is stamped fraudulent *per se*.

So inflexible is the rule that any such sale, to a wrongdoing partner, or other fiduciary, must be set aside on the mere request of the co-partner. And no inquiry is even permitted to be raised as to the fairness, of any transaction so entered into, in violation of the fiduciary obligations of a partner, or other trustee toward a trust property.

3. These principles have been followed and restated by this Court as follows:

Holman v. Ryon, 61 App. D. C. 13.

It is a wholesale doctrine based upon reasons of public policy, that a trustee may not purchase or deal in trust property for his own benefit, or on his own behalf, directly or indirectly. (*Michoud v. Girod*, 4 How. 503.)

"So jealous is the law of dealings of this character by persons holding confidential relations to each other, that the cestui que trust may avoid the transaction even though the sale was without fraud, the property sold at its full value, and no actual injury to his interests could be proven."

4. The same principle is so universally established that it has been enacted into statutory form, in the Uniform Partnership acts of 27 States, as follows:

Uniform Partnership Act. Sec. 21.

"*Partner accountable as a fiduciary.* Every partner must account to the partnership for any benefit, and

hold as trustee for it, any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership, or from any use by him of its property."

Uniform Partnership Act. Sec. 30.

"*Partnerships not terminated by dissolution.* On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed."

5. These same rules have been repeatedly laid down for the Federal jurisdiction, by the Supreme Court. The rule of *Stare Decisis* requires the District Court and this Court to follow the rules so laid down by the Supreme Court. Appellant thus has a constitutional right to have those rules applied in the determination of the issues in this suit. Finally, Sec. 241, Title 18, U. S. C., makes it a criminal offense for two or more persons to conspire to deprive appellant of that right.

6. Thus, while the rules in question have been enacted into statutory form in 27 states, it would not be a criminal offense—so far as appellant has learned—to deprive a partner of any right under those rules.

7. In the District of Columbia on the other hand, those rules have not been enacted into statutory form, but have been laid down by the Supreme Court. And thus under Sec. 241, it becomes a criminal offense in the District of Columbia for two or more to conspire to deprive appellant of any such right.

Criminal Character of the Receivership.

8. Despite the unshakeable character of those rules, and the criminal penalty for their violation in the District of Columbia; there has never been more than the slightest pretense of concealment, that the whole aim and purpose of the receivership was to use it as a fraudulent and criminal means whereby the plaintiff appellee should first secure

complete possession and control of the partnership business, as manager under the Receiver; and then, second, that a fraudulent sale of the partnership business to the plaintiff partner—and at a fraction of its value—should be brought about; either by shutting off appellant's income from the partnership, and thus of forcing appellant to consent to such a sale to the plaintiff partner; or else, through resort to a fraudulent judicial sale, to bring about an illegal sale of the partnership property to the plaintiff appellee, by the Court itself.

9. All of that fraudulent and criminal scheme has now supposedly been carried through to a successful conclusion. For prior to 1933, the plaintiff appellee had first alienated, and secured control for himself, of certain vital agencies of the partnership. The plaintiff appellee then, through his attorney, Selig C. Brez, made coercive and fraudulent demands on appellant that appellant should sacrifice his interests in the partnership, to the plaintiff appellee, and at a fraction of their value.

10. As an alternative, the said Brez claimed, that the business would be thrown into receivership; and that he then had some secret means whereby the plaintiff appellee could evade the bar against purchase by a fiduciary; and that the plaintiff appellee could thus purchase the partnership business through a dummy corporation.

11. Obviously, such secret means could only be some secret influence with the judges of the District Court. And since there were eight judges at that time, that claim seemed preposterous. Experience has shown however that the said Brez did have access to such influence; and so that, as stated, he has been able to carry the whole scheme through to a supposedly successful conclusion; except that the illegal purchase by the plaintiff appellee was made openly and directly, and without resort to a dummy corporation.

12. In pursuance of that scheme, the plaintiff appellee first had the business thrown into receivership, in March, 1933; and on his mere assertion that irreconcilable difference had arisen between the partners. Then, through threats that the aforesaid vital agency contract of the firm would not be continued, unless the plaintiff appellee were appointed manager, he had himself appointed manager under the receiver, at a so-called "salary" of \$100 a week.

13. By that corrupt means, the plaintiff appellee had thus secured actual control and possession of the partnership business for himself, and in addition a "salary" of \$100 a week from the partnership funds.

14. All of appellant's property had thus been seized through the receivership. Appellant's income was thus shut off, and appellant was given no funds for carrying on his defense, or his appeals in this suit.

15. That situation continued for 10½ years, or until late 1943. During that period, the business was shown to have cleared approximately \$300,000. And during that 10½ years, appellant was given a total allowance of only \$4,170 from appellant's half interest in the partnership.

16. Appellant was able to borrow enough money for his bare living expenses, but had no funds to carry on his defense. One appeal after another, by appellant, was thus dismissed for failure to file record, or to file brief.

17. And by that means the plaintiff appellee forced through a fraudulent order for sale. Each partner was then given a \$50,000 allowance in late 1943.

18. The business was put up at public auction, in 1944, under that said fraudulent order for sale. Then, through a long series of further glaringly fraudulent orders, the partnership business was finally sold to the plaintiff appellee in March 1946, and at about one third of its value.

19. The partnership business was earning probably \$70,000 to \$80,000 a year. It had estimated actual net

assets of approximately \$491,000; and an estimated actual value of good will of a further \$250,000, or a total actual value of \$750,000.

20. As indicating the outrageously fraudulent character of that sale; the entire business was sold to the plaintiff partner, at a supposed price of \$240,000. And included in that purchase price of \$240,000 was an item of *\$191,000 in cash, and a further estimated \$50,000 of good accounts receivable*. But since a partner cannot buy his half interest from himself; all of this was mere window dressing. What it actually amounted to was that it was a forced sale of appellant's half interest in that \$750,000 partnership business, for \$154,000, and of this amount \$10,000 was retained for expenses.

21. Since that time the business is estimated to have earned a further \$500,000. So that the actual value of the business, with accrued earnings, would be approximately \$1,250,000, of which this appellant would be entitled to one half, if appellant is able to force a proper accounting. It is further a criminal offense to deny appellant any such accounting.

22. The plaintiff appellee and the Receiver, and their respective Counsel, are well aware that—legally—that sale to the plaintiff appellee, must be set aside on the mere demand of this appellant; and that he must account to the partnership, for all gains that he has made from his personal dealings with the partnership property. Also that his gains must be restricted solely to his half interest in the partnership profits. The appellee's and their Counsel further appear to be fairly certain that this Court would not attempt to overturn that universally established rule.

23. Under these conditions, it is clear that they, or those in collusion with them, or their agents; have resorted to carrying on a continuous campaign of criminal attacks against appellant, through the use of poisonous and nerve type gases, of a military type; but, generally of a merely

irritant character. In addition, however, they have made intermittent attempts at outright assassination of this appellant, through the use of strictly lethal type poisons. This has usually been done, whenever appellant had an important action to take in the litigation. And since they have a seemingly unlimited means of carrying on such attacks, they have been able to use whatever amount was necessary to prevent appellant from carrying on any actual defense in the litigation.

24. By reason of these attacks, appellant was driven from his D. C. apartment in December of 1949. For several months appellant lived in hotels here; but then, because of further attacks, appellant went to Baltimore and lived in hotels and rooming houses there for several months more.

25. Because of further attacks, appellant returned to Washington, and in July 1950, purchased a semi-detached house on 45th St., N.W. It appeared that in that seemingly isolated situation, appellant would be almost immune to gas attacks. It quickly developed however, that that house had been prepared as a "plant"; and that it had been so brilliantly arranged with poison gas "conduits" that appellant was unable to get any continuously unpoisoned air through any of the 30 windows or doors, in that two story attic and basement house.

26. Because of appellant's own training in thermodynamics, and in gas engineering, appellant was able to defend himself in part against those attacks. In July, 1951, however, appellant was finally driven out of the 45th St. house.

27. Appellant then bought a second house at 122 So. Fenwick, in Arlington. Appellant learned before he had completed the purchase, that that house also was a "plant"; but since it was a detached house, and appellant could obtain immediate possession, appellant completed the purchase despite the knowledge that it also was a "plant".

28. In September, 1951, that house also proved unusable. Appellant was then offered a 3rd house at 735 26th place, So. Arlington, which was completed only as to the 1st floor. Appellant learned that that house also was a "plant" even before the contract was signed. But since it sat alone on one side of a block, it appeared to offer a better chance of defense against gas attack, and so appellant completed the purchase anyway.

29. With the betterment of appellant's defense against gas attack, appellant expected that resort would then be had to more serious forms of attack. And when appellant's brief was due in this case, one attempt after another, with lethal type poisons, was then made on appellant's life. The details are set out in appellant's motions from last October to January, to which the Court is referred for further details.

30. In December, it became apparent that since appellant is a bachelor, appellant would be unable to defend himself against those more dangerous forms of attack. Appellant therefore arranged to move to Pennsylvania, and to purchase or rent a house, and to employ a guard there. However, there were indications that even more fatal forms of attack, by gunfire, might then be resorted to. It is further true that certain of appellant's inventions are believed to be of immense and perhaps of crucial importance to the national defense. For these reasons appellant decided to seclude himself in the 26th St. house, for such time as might be necessary to get out the said military inventions; and—more particularly—for finding some way of turning those inventions over to the Government in some manner where they could not be blocked, or perhaps "leaked" to the Russians, by the same corrupt ring that appellant is so clearly fighting in this case.

31. Appellant has thus usually kept indoors at the 26th St. house, except for a single quick trip out each day. Appellant is now substantially ready, however, to attempt to

find some safe way of turning over the said inventions to the government; since any leak in the matter, might prove disastrous to the national interest. No further information can be given as to these inventions that are of military importance.

32. Appellant is also, however, preparing to bring out a wide array of basic discoveries as to the foundations of physics; that is, as to the approximate structure and actual existence of the Ether; the approximate physical structure of gravitation, magnetism, and of the electron; the physical foundation for the theory of the conservation of energy; and the nature of light and of the electromagnetic wave, etc. And though these discoveries are of a purely basic character, there is reason to believe that they also may prove to be of immense military importance, by throwing physics back onto the rigidly mechanistic and strictly common sense basis, of the classical school of Newton and Faraday.

Grounds for the Motion.

33. As specific grounds for the motion for reconsideration, appellant shows to the Court:

I. That while, superficially, appellees try to make it appear that this is merely an ordinary appeal, in which appellant for some obscure reason—and supposedly of a delusional character—persistently refuses to file his brief; the real reason for the delay is that appellee's or those in collusion with them, are utilizing an immense organization—and one that is apparently in the nature of a secret police or "Ogpu", and which is apparently connected in some way with the Justice Department—to carry on criminal attacks against appellant, and to an extent that is all but incredible.

II. Appellant's most important aim in the appeal, is to keep the case open until appellant can get into position to force a real accounting by the plaintiff appellee, and to which accounting appellant has a constitutional right. Ap-

pellant thus plans to ask this Court, or the Supreme Court, either on this appeal, or by mandamus, to force the District Court to grant such an accounting to appellant.

III. Appellant is also preparing to file almost immediately in Congress a petition for an investigation of this whole criminal abuse of receivership; and of the seemingly obvious widespread corruption and corrupt influence in this case.

Unfortunately the campaign of criminal attacks against appellant has been so brilliantly planned that it is supposedly proof against criminal prosecution. It is also so fantastic in character, and of such all but incredible complexity, that appellant would supposedly be suspected of delusions if appellant should make a primary complaint against it.

Appellant's complaint however, will be primarily against the criminal and corrupt abuse of this receivership; and only incidentally as to the criminal attacks that have been carried on against appellant. Furthermore, while any single instance of attack is perhaps impossible of convicting proof; the campaign itself has been carried on so long, that many slips have been made; and so that a wide range of interlocking circumstances, serve—as appellant believes—as convincing support for the actual claims of attack made by appellant. But whether or not the campaign of attacks can be proved; the charge of the criminal abuse of this receivership, and as to the illegal and fraudulent sale of the business is irrefutable; and that is appellant's main line of attack.

Appellant, moreover, is not sitting helplessly by, while these attacks are being carried on. Appellant's major concern is, however, to make his inventions and discoveries available to the National defense. Appellant is therefore carrying on a carefully planned campaign to that end, and included therein is a final defense against the said criminal attacks.

Appellant is thus at last prepared to demand an investigation of the seemingly obvious widespread corruption in the District Court; and of the apparent connection of some high officials of the Justice department with that corruption.

It is appellant's opinion that such a Congressional investigation will show that there has been organized in this country, an enormous secret organization that is seemingly equivalent to a secret police or "Ogpu"; that that organization is tied in also with the Justice Department, and that it includes also a considerable number of moderately high ranking army officers.

It is further appellant's opinion that such an investigation will show that that organization has access to the resources of the Chemical Warfare Services; and that it does not hesitate to employ continuous criminal attacks, or outright assassination to accomplish its purposes; and that such attacks are carried out with such technical skill that they are almost immune to criminal proof or prosecution.

As before stated, however, appellant's principal complaint will be as to the corrupt and criminal abuse of this receivership, and to that charge there can be no legal defense.

It is appellant's opinion that any such investigation will result in a scandal so black that the current scandals as to income tax and deep freezers will seem almost trifling in comparison.

It is unfortunate that the evidence as to the said criminal attacks is so diffuse that it cannot be presented except by a personal investigation of the houses involved. It is also unfortunate that appellant cannot present even some of the available evidence without disclosing some of appellant's secret defenses against such attacks.

Nevertheless, the proofs as to the criminal abuse of this receivership, and of the illegal and fraudulent sale of the partnership business, is so complete that in appellant's opinion, this Court cannot afford to place itself in the position of having ignored or condoned it.

IV. For these reasons, appellant prays that the Court recognize the real situation in this case; and that it set aside the order for dismissal of March 28th; and that it takes such steps as may be possible to give appellant protection against further attacks.

EDWIN J. CREEL, *Appellant*,
122 S. Fenwick St.,
Arlington, Virginia.

Certificate of Service and of Good Faith.

I, Edwin J. Creel, being first duly sworn, depose and say that this petition is made in good faith and not for purpose of delay. Also, that I have read the foregoing petition and that all matters of fact and of opinion are believed to be substantially true as stated; and further that I personally deposited in the United States mail, addressed to G. B. Craighall, Hibbs Bldg., and to Leon Tobriner, Southern Bldg., both of Washington, D. C., a copy of the foregoing petition.

Signed EDWIN J. CREEL.

Subscribed and sworn to before me this 11th day of April,
1952

SHERBILL STOVER,
Notary Public for D. C

My Commission Expires Sept. 30, 1955.

